Australian Government

Office of the Special Investigator

OSI reference: FOI24/16; ACON24/33

19 September 2024

Dr Christopher Elliott
By email: cgaelliott@gmail.com

Dear Dr Elliott

Freedom of Information Request FOI24/16 – Decision letter

This letter provides a decision on your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act). The Office of the Special Investigator (OSI) received your request on 17 July 2024.

Background

On 17 July 2024, you requested to access:

> *1.) OSI investigative files related to a pair of documents sent from the AG Department to the Department of Defence (dated 6 and 10 December 2012) regarding whether Task Force 66 Rule of Engagement Serial 7 was incompatible with the Commonwealth Criminal Code (s 268. 70).*
>
> *2.) 2012 and 2013 documents sent from the Department of Defence that were responsive to this request.*

On 9 August 2024, the OSI acknowledged your request.

Your request was due on 19 August 2024.

My decision

I am authorised to make decisions on FOI requests made to the OSI.

I have identified 5 documents that fall within the scope of your request. I did this by making inquiries of staff likely to be able to identify relevant documents and arranging for comprehensive searches of relevant OSI holdings.

In making my decision, I have considered:

- the terms of your request
- the documents within the scope of your request
- advice given to me by officers who assisted with processing your request.
- relevant provisions of the FOI Act
- the FOI Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

I have decided to refuse access to 5 documents. The reasons for my decision are below.

My decision

Section 42: Documents subject to Legal Professional Privilege

Under s 42(1) of the FOI Act, a document is exempt if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that with respect to the relevant material:

- a legal adviser-client relationship exists,
- the advice was provided independently,
- the communication was for the purpose of giving or receiving legal advice or for use in connection with actual or anticipated litigation, and
- the advice was provided on a confidential basis.

I am also satisfied that the legal professional privilege in relation to the material has not been, and should not be waived. Accordingly, I am satisfied that the relevant material is exempt from disclosure under s 42(1) of the FOI Act.

This exemption is not subject to an overriding public interest test. Accordingly, I have not turned my mind to whether disclosure of the information would be contrary to the public interest.

Your rights

If you are unhappy with the way we have handled this FOI request, you can make an FOI complaint to the Information Commissioner.

More information about making an FOI complaint is available on the Office of the Australian Information Commissioner website: https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints.

Your review rights

If you are unhappy with this decision, you can apply for an internal review or Information Commissioner review. You should ask the OSI for an internal review as a first step.

Internal review

Applications for internal review must be made:

- within 30 days of the date of this letter, and
- in writing to: foiandprivacy@osi.gov.au.

You should also explain why you believe the internal review is needed.

Information Commissioner review

You can apply to the Information Commissioner for review of this decision. An application for review by the Information Commissioner must be made to the OAIC:

- Within 60 days of the date of this decision letter.
- Be made in writing – For further information, access:
  - *Apply for an Information Commissioner review*
  - *Your freedom of information rights*

Questions about this decision

If you want to talk about this decision, contact Sarah – the OSI's Information Access and Records Manager – by email to foiandprivacy@osi.gov.au.

Yours sincerely

[Signed electronically]

Caroline
Position number 2508699
Authorised Decision Maker
Office of the Special Investigator

Attachment A: Schedule of documents

Australian Government

Office of the Special Investigator

Attachment A: Freedom of Information Request FOI24/16 – Schedule of documents

Document number	Document date	No. of pages or folios	Description/title	Decision on access	Exemptions/deletions
1	10/12/2012	4	Email chain ending at 12:17	Refuse access	s 42(1)
2	22/12/2012	4	Email chain ending at 09:52	Refuse access	s 42(1)
3	07/12/2012	3	Email chain ending at 15:44	Refuse access	s 42(1)
4	12/12/2012	2	Email chain ending at 12:17	Refuse access	s 42(1)
5	12/12/2012	10	PDF attachment to document 4	Refuse access	s 42(1)